

**IN THE MATTER OF NELLO SANTACROCE & DOMINIC
FANELLI d/b/a GILROY ASSOCIATES**

TSCA Appeal No. 92-6

FINAL DECISION

Decided March 25, 1993

Syllabus

The complainant in this action is U.S. EPA Region IX. Complainant is appealing an Initial Decision dismissing a complaint against respondents Nello Santacroce and Dominic Fanelli, doing business as Gilroy Associates ("Gilroy"). The complaint alleged violations of the Toxic Substances Control Act and implementing regulations covering use, marking and reporting requirements of transformers containing polychlorinated biphenyls ("PCBs"). The complaint was dismissed, after a hearing, because the presiding officer concluded that complainant had not established by a preponderance of the evidence that respondents owned or operated the transformer.

On appeal, issues were raised as to the validity of the EPA inspection documenting the alleged violations, ownership and operation of the transformer, and the penalty calculations.

Held: Complainant failed to establish that respondents either owned or operated the transformer. The transformer was purchased by the utility serving the site and there is no documentary evidence that it was purchased on behalf of the site owner, as complainant alleged. Complainant also has failed to establish that the transformer is a fixture under California law that would have passed with the fee of the land to subsequent purchasers of the land. In addition, the actions of respondents which complainant asserts show ownership of the transformer are inconclusive and do not prove ownership. Finally, complainant has not established that Gilroy operated the transformer since the mere use of electricity flowing through the transformer does not constitute operation of the transformer.

Because complainant has not met its burden of proof in establishing that respondents either owned or operated the transformer, the complaint was properly dismissed. In light of this determination, respondents' other objections need not be reached.